

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known As "Contra Costa 8" Pursuant to A Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets.

Application 05-06-029
(Filed June 17, 2005)

(U 39 E)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

I. Summary

This ruling and scoping memo describes the issues to be considered in this proceeding and sets forth the procedural schedule for their resolution. As required by Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure this ruling affirms the proceeding category and the need for evidentiary hearings (EH) and designates a principal hearing officer following a Prehearing Conference (PHC) that was held on August 11, 2005.

This ruling establishes the dates for service of testimony and reply testimony and schedules EHs for December 5-9, 2005.

II. Background

On June 17, 2005, Pacific Gas and Electric Company (PG&E) filed an application seeking Commission authorization for approval of an Asset Transfer Agreement (ATA) concerning certain generation assets known as “Contra Costa 8” pursuant to a settlement and release of all claims agreement approved by the Commission on January 14, 2005¹. PG&E seeks approval of the ATA and ancillary agreements, and for authorization to complete construction, along with requested funding and cost recovery mechanisms, under which PG&E may accept, complete and operate a new combined cycle electric generating facility to be known as Contra Costa 8 (CC8).

The January 14, 2005, Mirant Settlement gave PG&E the option to negotiate an ATA for CC8, and PG&E and the Mirant parties have negotiated such an agreement that PG&E argues is beneficial for its customers. PG&E estimates that the facility can be completed for a cost of \$310 million and will provide a facility by the summer of 2008 that will produce 530 Megawatts (MW) of generation. PG&E also requests approval of cost recovery and ratemaking mechanisms for CC8.

Notice of PG&E’s application appeared on the Commission’s Daily Calendar on June 21, 2005. Protests were received on July 21, 2005, from The Independent Energy Producers Association (IEP), the Office of Ratepayer Advocates (ORA), the City and County of San Francisco (CCSF) and Modesto Irrigation District and Merced Irrigation District (MID/MID), and PG&E replied to the protests on July 28, 2005.

¹ The “Mirant Settlement.”

A PHC was held on August 11, 2005, and all parties filing protests, as well as other parties, were in attendance.

III. Scope of the Proceeding

PG&E's application framed the core issue: the utility seeks Commission authorization to acquire and accept the transfer of CC8, a 530 megawatt (MW) facility that is part of the Mirant facility in Contra Costa County, and then complete the construction of the facility and operate CC8 as a utility owned asset on a cost of service basis. PG&E also seeks approval of cost recovery and ratemaking mechanisms for CC8.

In summary, PG&E posits that CC8 will benefit its ratepayers as the facility is already 40% completed, so PG&E is acquiring it at a cost estimated to be significantly below the cost of building an equivalent facility from the ground up. The utility estimates that it can complete CC8 for \$310 million, assuming construction resumes in September 2006. Because CC8 has already been certified by the California Energy Commission (CEC) and is partially built, PG&E is optimistic that the facility can be on line by summer of 2008.

ORA and The Utility Reform Network (TURN) do not necessarily oppose the CC8 project, but have some concerns over PG&E's cost estimates and proposed ratemaking treatment. In particular, ORA wants more information about a number of issues, including the contingency percentages, the commissioning costs and their ratemaking treatment, staffing and income tax.

CCSF has an interest in this proceeding because of the potential impacts the project might have: (1) on air quality in the City and the effect the transfer of the air quality permit from Mirant to PG&E might have on the operation of the plant in light of the NOx bubble Bay Area Air Quality Management District

(BAAQMD) regulations; (2) on PG&E rates to City residents; and (3) on the City's planned community choice aggregation (CCA) program.

MID/MID are also interested in this proceeding because of the impact on their customers that might result from PG&E's proposal to recover stranded costs associated with CC8 through the imposition of a nonbypassable charge (NBC) on all current customers, including all customers who depart PG&E service after the CC8 closing date, over a 30-year depreciation period. If PG&E is allowed to impose a NBC in this manner, MID/MID is concerned that it will give the utility a competitive advantage over publicly owned utilities such as the Merced and Modesto Irrigation Districts. MID/MID want the opportunity to influence how any NBC from CC8 is crafted by the Commission.

IEP takes no position on the substance of PG&E's application, but questions whether this application process is consistent with the Commission's procurement policies as articulated in D.04-12-048. In particular, D.04-12-048 directed the utilities to undertake procurement activities through competitive all-source solicitations. While D.04-12-048 did acknowledge that there was the possibility that utilities would obtain resources through bilateral agreements, the Commission stated "Negotiated bilaterals are discouraged - they will be evaluated on a case-by-case basis."² In light of the direction given by the Commission for procurement by all-source solicitations, IEP seeks clarification as to whether this application for a bilateral agreement is consistent with the Commission's guidelines, and if not, does CC8 justify an exception? IEP also asks for guidance as to how bilateral agreements should be evaluated.

² D.04-12-048, p. 128.

IV. Discussion

In summary, when the application and protests are analyzed, the “protests” do not focus on the substance of PG&E’s application, or the value of CC8 to PG&E’s customers/ratepayers, but instead concentrate on ensuring that if the Commission approves the project, certain conditions are met. In particular, parties are interested in securing the best price and ratemaking mechanisms for the ratepayers, protecting departing loads from over-burdensome NBCs, and guaranteeing that the project is the least-cost/best-fit option, even though it is presented outside of a competitive solicitation. This is the scope of this proceeding.

At the PHC, the parties discussed the possibility that most of the issues, except for IEP’s concerns about the procurement process, might be addressed in an informal manner through meetings/workshop/collaborative efforts, rather than through the traditional steps of rounds of testimony, EHs, and more rounds of post-hearing briefs. However, because commencing construction by September 2006 is a key factor in PG&E’s cost analysis, and any delay could increase the cost estimates, the Commission sets a schedule for the exchange of testimony and for EHs, as well as directed PG&E to initiate collaborative meetings before August 26, 2005.

V. Bilateral Agreements

IEP is correct that the Commission’s December decision on the investor-owned utilities’ (IOU) Long Term Procurement Plans (LTPP) clearly stated a preference for the IOUs filling their resource needs through all-source solicitations. However, the Commission also did not foreclose the possibility that an IOU could bring a bilateral agreement to the Commission for a “case-by-case” evaluation. This application proceeding is the not proper forum for

clarification of the Commission's policies on utility procurement, and the directives set forth in D.04-12-048 will stand on their own. However, discussion of the proper means to evaluate this particular bilateral agreement is within the scope of this proceeding.

VI. Category and Need for Hearing

A. Category

We affirm the Commission's preliminary determination that this proceeding should be categorized as ratesetting.

B. Hearing Schedule

Hearings may be needed in this proceeding. We reserve the following dates for hearings: December 5-9, 2005. If parties reach agreement on all outstanding issues before the start of EHs, the hearing dates will be vacated upon the submission of a settlement agreement. Following is the schedule for testimony and hearings:

Interested Party Testimony	10/14/05
Concurrent Rebuttal Testimony	11/18/05
EHs	12/5 – 12/9/05

Dates for the service of post-hearing briefs will be determined at the close of the EHs and the matter will be submitted when reply briefs are filed.

C. Principal Hearing Officer

This ruling designates ALJ Carol Brown as the principal hearing officer in this proceeding.

D. Service List

The official service list is now on the Commission's web page, www.cpuc.ca.gov. Parties should confirm that the information on the service

list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the judge. Parties should frequently check the official service list to ensure that they are operating with the most current list. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

E. Hearing Preparation

Hearings are scheduled for December 5-9, 2005. If the hearings are to go forward as calendared, on or before Friday December 2, 2005, PG&E is directed to organize a telephonic meet-and-confer conference with all parties to identify the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on December 5, 2005, will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

F. Procedure for Requesting Final Oral Argument

If EHs are held in this proceeding, pursuant to Rule 8(d), parties requesting final oral argument before the Commission should include that request in the opening line of their concurrent opening brief and should identify in the heading of the brief that the brief includes this request.

G. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that *ex parte* communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “*ex parte* communications.”

The law permits Commissioners to engage in *ex parte* communications if all interested parties are invited and with no less than three business days’ notice. If a Commissioner agrees to meet with an individual party, the Commissioner must grant all other parties individual *ex parte* meetings of a substantially equal period of time. The law permits written *ex parte* communications provided that those who provide the letter to a decisionmaker must provide a copy of the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 7.) Parties must report *ex parte* communications as specified in Rule 7.1.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. Ex parte communications are subject to Rule 7 of the Commission’s Rules of Practice and Procedure.

4. ALJ Carol Brown is the principal hearing officer in this proceeding.
5. Parties shall follow the service list rules as set forth herein.
6. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix "A" hereto.

Dated August 16, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

APPENDIX A

Hearing Room Ground Rules

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1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. If the exhibit is testimony that has already been served on the ALJ, she only needs to be provided with one copy for central files. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. To the extent possible, exhibits should be distributed before the proceeding "goes on the record" so that parties are prepared to go forward with cross-examination when the ALJ goes "on the record." Breaks can also be used for the distribution of documents.
5. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand, and **only corrections of a substantive nature will be allowed from the witness stand.** Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each

correction page should be marked with the word “revised” and the revision date.

6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
8. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
9. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties.
10. Food and beverages are allowed IF you dispose of containers and napkins properly.

A.05-06-029 MP1/CAB/jva

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated August 16, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.